

HIGH COURT OF GUJARAT (D.B.)**ANJALI COATING PVT LTD*****Versus*****UNION OF INDIA****Date of Decision:** 22 November 1999**Citation:** 1999 LawSuit(Guj) 813**Hon'ble Judges:** [J N Bhatt](#), [D C Srivastava](#)**Eq. Citations:** 2005 191 ELT 69**Case Type:** Special Civil Application**Case No:** 9025 of 1999**Subject:** Constitution, Customs, Excise**Acts Referred:**[Constitution Of India Art 226](#)[Central Excise Act, 1944 Sec 35\(f\)](#), [Sec 4\(4\)\(d\)](#).**Final Decision:** Petition dismissed**Advocates:** [Nanavati Associates](#), [Akshaya H Mehta](#)

[1] The only question we are confronted with at this stage in this petition under Article 226 of the Constitution of India is whether the exercise of discretionary power by the respondent No. 2 in passing the order on stay application pending the Appeal against adjudication made by respondent No. 3 is improperly, unreasonably or unjustly exercised? To which our straightway, spontaneously and clear answer is in the negative. The Appellate Authority while exercising the discretionary power in directing the amount of pre-deposit as a condition precedent could not be shown to be in any way at this stage tainted with any vices warranting our interference against the impugned interim order. Needless to state that the plea of hardship was not raised before the Appellate Authority and rightly so not before us. The only contention which has been advanced in this petition is that the interpretation of the provision of Section 4, sub-section (4)(d) of the Central Excise Act, at the interim stage by the Appellate Authority for determining the amount of pre-deposit could be said to be so perverse and that it requires interference at the interim stage. Such a question is required to be

gone into by the Appellate Authority at the time of fulfilled final hearing. Prima facie, it has been observed that the impugned order of the respondent No. 3 before the respondent No. 2 could not be said to be vulnerable so as to afford the benefit by reducing the amount decided towards pre-deposit under Section 35(F) of the Act.

[2] It may also be stated that it is a settled proposition of law that the interim relief claimed by the party and if allowed by the Court when would tantamount to allowing the whole matter on merits, in reality, could not be granted. The end result if this petition is allowed at the interim stage would culminate into the same factual position. Therefore, at this stage without entering into further merit of the interpretation of Section 4(4)(d) of the Act the interim observation made by the Appellate Authority for determining the quantum of amount of pre-deposit could not be said to be unjust or shockingly perverse calling for our interference exercising extraordinary, plenary, discretionary, constitutional remedy under Article 226 of the Constitution of India.

[3] With the result the petition deserves only merit is the rejection at the threshold. Accordingly it is rejected.

